

**TESTIMONY OF JACQUELINE AGTUCA
ACTING DIRECTOR, OFFICE OF TRIBAL JUSTICE
UNITED STATES DEPARTMENT OF JUSTICE
SENATE COMMITTEE ON INDIAN AFFAIRS
October 4, 2000, 10:00 a.m.**

I Alaska Native Villages and Alcohol.

There are approximately 226 Alaska Native villages that are federally recognized Indian tribes. See U.S. Dept. of Interior, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," 65 Fed. Reg. 13298 (2000); John v. Baker, 982 P.2d 738 (Ak. 1999). As federally recognized Indian tribes, Alaska Native villages have a government-to-government relationship with the United States, under which our Nation has committed to assisting them in enhancing their self-government and promoting their welfare. In his historic executive order on Consultation and Coordination with Indian Tribal Governments, President Clinton affirmed basic principles of Federal relations with Indian tribes:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. . . . As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

E.O. 13084 (May 14, 1998). In furtherance of those principles, the Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes declares the Department's "commit[ment] to strengthening and assisting Indian tribal governments in their development and to promoting Indian self-governance." Policy at 4.

Alcohol abuse, alcoholism, and attendant violence and social impacts are among the most serious problems Alaska Native villages face. See generally 25 U.S.C. § 2401(3) ("alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today"). The Governor of Alaska's Commission on Rural Governance and Empowerment notes in its 1999 Final Report to the Governor (Report) that "[a]lcoholism continues as an endemic condition that ravages individuals, families and communities in rural, particularly Native, Alaska." Report at 12. As an example of the impact of this condition, one study concluded that Fetal Alcohol Syndrome occurs among Alaska Natives at rates somewhere between ten and twenty-five times its incidence among Alaska's non-Native population. Report at 91 n.29.

Alcohol abuse produces significant law enforcement problems in Native communities. There is a strong correlation between alcohol abuse and crime in Indian communities throughout the Nation. In its 1999 report, American Indians and Crime, the Bureau of Justice Statistics found that over half the American Indian victims of violent crime surveyed reported that their assailant was under the influence of alcohol or drugs or both at time of the offense. Id. at 9. Approximately 75% of the victims of domestic violence reported that the perpetrator had been

drinking at the time of the offense. Id. at 10. This close correlation between alcohol abuse and violent crime occurs in Alaska as well. According to the Governor's Commission, ninety-seven percent of all crimes committed by Alaska Natives are committed under the influence of drugs or alcohol, with alcohol being the predominate contributor. Report at 106. Experts report that murder rates among Alaska Natives far exceed the rates nationwide and for non-Native Alaskans, see Matthew Berman and Linda Leask, "Violent Death in Alaska: Who is Most Likely to Die?" Alaska Review of Social and Economic Conditions, Vol. XXIX, No. 1 (Feb. 1994) at 1, and in the experience of the United States Attorney for Alaska nearly all – if not all -- homicides in Alaska Native communities are alcohol-related.

II The Existing Legal Framework.

Beginning in 1862, federal law prohibited the sale of alcohol to Indians anywhere in the United States. See 12 Stat. 338; Rice v. Rehner, 463 U.S. 713, 722 n.8 (1983); see also 18 U.S.C. §§ 1154, 1156; Felix M. Cohen, HANDBOOK OF FEDERAL INDIAN LAW (1982 ed.) at 305 n.189 & 307. Congress lifted the nation-wide prohibition in 1953 and replaced it with a scheme whereby sales to Indians are lawful outside "Indian country," while introduction and sale of alcoholic beverages within "Indian country" must conform to both state and tribal laws. 18 U.S.C. § 1161. Thus, Indian tribes in the contiguous forty-eight states have federal statutory authority to regulate alcoholic beverages within their jurisdictions. See U.S. v. Mazurie, 419 U.S. 544 (1975); see also City of Timber Lake v. Cheyenne River Sioux Tribe, 10 F.3d 554 (8th Cir. 1993). To exercise that authority, tribes submit tribal beverage control ordinances to the Secretary of the Interior for certification and publication in the Federal Register. 18 U.S.C. § 1161.¹ Alaska Native villages, as recognized tribes, are eligible to receive that delegated statutory authority. However, they are uniquely unable to exercise it as a practical matter because it is tied to the "Indian country" status of lands, and the Supreme Court has held that Alaska Native villages do not, with the exception of the Annette Island Reserve and possibly scattered individual trust allotments, occupy "Indian country." See Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998).

Under Alaska state law, state-incorporated local governments and unincorporated areas may exercise local option and, in doing so, prohibit sales, introduction, and/or possession of alcoholic beverages within their jurisdictions. See Ak. Stat. 4.11.010 et seq. Local governmental units and unincorporated areas that coincide with or include Alaska Native villages have exercised that authority in many instances. See Matthew Berman and Teresa Hull, "Community Control of Alcohol in Alaska," Alaska Review of Social and Economic Conditions, Vol. XXXI, No. 1 (Apr. 1997). Thus, 52% of Alaska Natives "live in places that restrict the availability of alcohol." Id. Those local option laws have had a positive impact on conditions in many of those Native communities. For example, a recent comparison of Native villages where local options have been exercised showed that there were 4.5 homicides in "wet" villages for every one in "dry" villages. Similarly, villages that voted to become "dry" between 1980 and 1993 experienced fifty percent

¹ Liquor is also prohibited in Indian country where the tribe having jurisdiction over that area of Indian country has enacted no ordinance permitting liquor in that area. 18 U.S.C. sec. 1161.

drops in local homicide rates.

Nonetheless, the persistence of serious alcohol-related problems in Native communities demonstrates that further measures are necessary to address them. One reason why the state law framework fails to completely address the problem may stem from the distances between Native villages and state authorities and competing priorities within available resources faced by state law enforcement. It is difficult for state troopers to cover the necessary distances to investigate alcohol-related offenses under those circumstances. There is, perhaps for this reason, a perception in rural Alaska that state law enforcement is inadequate to meet community needs. A 1995 study cited by the Governor's Commission concluded "that most rural residents felt the policing services from the [state] Troopers were insufficient in both degree and magnitude to meet their communities needs." Report at 103. In many Native villages, moreover, there is no municipal or other state subdivision authority present to manage these problems. As the Governor's Commission noted, "[i]n 94 Alaska communities, federally recognized tribes provide the only local government." Report at 26. Indeed, because the administrative costs of state-law incorporation sometimes may in some cases exceed its perceived benefits, there is a trend in some communities away from maintaining state subdivision status. Report at 36.

As federally recognized Indian tribes, Alaska Native villages have some inherent authority, apart from whether federal statutes currently provide additional authority, to address alcohol-related problems within their communities under existing law, but that authority is limited. For example, Alaska Native villages have inherent authority to enact laws and enforce them against village members. See John v. Baker, 982 P.2d at 754-56. However, tribal governmental authority over non-members is ordinarily tied to their entry onto lands that are federally-designated as "Indian country." Alaska v. Native Village of Venetie, 522 U.S. at 527. Because courts have held that "Indian country" lands are for the most part absent from Alaska, Alaska Native villages are left with only that territorial authority over non-members that they might have as a landowner over their own lands.² Those limitations make it very difficult for Alaska Native villages to monitor or prevent the introduction of alcoholic beverages into their communities. For instance, Alaska Native villages may prevent alcohol from being introduced onto lands they actually own, which in some cases represent considerable areas, but they cannot enforce deterrent measures such as civil penalties or forfeitures against non-members. They also hinder Native village's ability to control alcoholic beverage transactions by non-members on non-Native lands, which may in some cases lie in the heart of Native communities.

III Alaska Native Villages and Alcohol Control.

When it enacted the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, Congress found that "Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members." 25 U.S.C. § 2401(12). While this primary responsibility rests with tribes, the Federal Government seeks, under the Trust Responsibility, to

² Normally, most Native lands around Native villages are owned by village corporations, rather than the villages themselves. For that reason, direct landowner authority would typically lie with the village corporations, rather than with the actual village governments.

assist tribes with addressing this serious problem. As the Attorney General explained in a recent publication, “The Department of Justice is committed to supporting the efforts of tribal governments to develop comprehensive strategies to address alcohol and substance abuse and related crime.” Attorney General Janet Reno, Foreword, Promising Practices and Strategies to Reduce Alcohol and Substance Abuse Among American Indians and Alaska Natives (DOJ/OJP 2000) (a copy of this publication is submitted as an Exhibit to this testimony).

The Department of Justice has sought to promote the capacity of Alaska Native villages to assume that responsibility by providing funding under the Indian Country Law Enforcement Improvements Initiative. Those funds assist tribes to develop law enforcement and legal infrastructure, which are needed components of strategies to promote community safety and address law enforcement problems, including problems that stem from alcohol abuse. For FY 2000, the Department of Justice awarded 13 grants totaling approximately \$2.25 million to tribal law enforcement agencies in Alaska under the COPS Tribal Resources Grants Program. Native villages use those funds to hire, equip, and train tribal law enforcement officers. 21 Alaska Native entities received grants under the Department of Justice’s Tribal Courts Program in FY 1999 for a total of approximately \$750,000. Those Tribal Courts funds are used to plan future tribal courts or to enhance the capacities of existing tribal courts. In addition, the Tribal Courts Program made a technical assistance grant of more than \$200,000 for technical assistance for Alaska tribal courts. Three Alaska Native entities – one village and two consortia – received grants for FY 1999, totaling approximately \$275,000, through the Department’s Tribal Youth Program. The Tribal Youth Program provides funds to tribes for comprehensive delinquency prevention, control, and juvenile justice system improvement programs, including programs to help tribes develop prevention programs focusing on alcohol and substance abuse. The Department has also made grants to Alaska tribes or inter-tribal entities under other programs that should assist Alaska Native villages to combat alcohol-related problems in their communities. Grants to Alaska Native entities have been awarded by the Department’s Drug Courts Program, the Youth Alcohol and Drug Prevention Program, the Drug Free Communities Support Program, and the Tribal Detention Facilities Program.

In addition, the Department of Justice and four other federal agencies co-sponsored a national Summit on Tribal Strategies to Reduce Alcohol, Substance Abuse, and Violence. The Summit provided an opportunity for tribal leaders to share experiences from their own communities and to highlight best practices that tribes employ to address these problems. The publication entitled Promising Practices and Strategies to Reduce Alcohol and Substance Abuse Among American Indians and Alaska Natives was issued by the Department of Justice, Office of Justice Programs in conjunction with the Summit..

One of the featured programs in the Promising Practices publication is operated for Alaska Natives by the Southeast Alaska Regional Health Consortium (SEARHC). In all its programs, SEARHC seeks to weave Alaska Native cultural elements into treatment and activities. Among other features designed to accomplish that goal, SEARHC recruits Alaska Native elders to guide the teachings used in programs regarding culture and tradition. One of SEARHC’s primary activities is aimed at tribal adolescents with alcohol and substance abuse problems and is called the “Raven’s Way Focused Youth Intervention Program.” Raven’s Way’s goal is to help youth

troubled by dependency problems find their own path towards spiritual healing by blending conventional and adventure-based therapy. Raven's Way employs wilderness excursions, remote camps, and other culturally appropriate features to pursue those goals. SEARHC's tradition-based approach has proven successful. SEARHC reports that for 1999, 60% of the Raven's Way graduates report sustained sobriety, 75% had decreased legal problems, and 50% had increased school attendance.

Raven's Way and SEARHC's overall approach shared characteristics with the other programs featured on the Justice Department publication. All of the programs offered services that provided a link to the spiritual belief of the Indian person, services that are culturally reflective of the Indian community, and services that strengthen the relationship of the Indian person to his or her community. As the Attorney General explained in the foreword to the publication, "[t]hese key qualities reflect not only the success of the programs but also speak to the history, survival, and future of Indian Nations in the United States."

Promoting the ability of Native villages to address the problems of alcohol abuse and alcohol-related violent crime helps enable Native villages to meet the responsibility that they have as tribes to "protect[] and ensur[e] the well-being of their members." Consistent with the approach advocated by the Office of Justice Programs' publication, we believe that approaches to this problems should be rooted in tribal culture and should be empowering for tribal communities. We believe, of course, that the state law framework has played a significant role towards combating alcohol-related problems in many communities and that solutions to this problem may require a commitment of state resources. However, the need for local tribal control and culturally suited approaches indicates to us that Alaska Native villages themselves will have to be directly involved in solving this problem and in efforts to control liquor in Alaska Native villages. In that regard, we hope that Native villages, as well as the State, will avail themselves of opportunities to engage in dialogue with each other and with other entities, public and private, and to pursue mechanisms that empower Native villages to develop and apply local solutions to the alcohol-related problems in their communities. Certainly, the Federal Government, for our part, should continue our current course of providing resources and other assistance to the village governments to enhance their capacity to address the problem of liquor traffic in their communities – including the development of tribal law enforcement and legal infrastructure, as well as treatment, prevention, and other tribal services. In the end, the very communities that face problems arising from alcohol abuse and alcohol-related violence should be able to locate and apply solutions that are suited to the particular needs and circumstances of their differing localities and that are culturally appropriate in the Native village settings.

IV Mail Transport of Alcohol in Alaska.

Another issue that has arisen is that, in our experience, local regulations governing introduction of alcoholic beverages are frequently circumvented by use of the mails to send alcohol into Native communities. Given the small populations of Alaska Native villages,ailable quantities of alcohol can substantially disrupt a community. Mail delivery in Alaska is heavily subsidized, making transportation of alcohol by mail economically feasible. In the same vein, we understand that introduction of contraband liquor into Native communities can be inordinately

lucrative for those willing to flout both local liquor regulations and federal law, under which transporting alcoholic beverages by mail is a criminal offense.

Transporting liquor by mail is currently punishable by up to one-year imprisonment or a fine. 18 U.S.C. § 1716(f). However, enforcement is rendered difficult by the protected status afforded the mails from searches by U.S. Postal regulations, 39 C.F.R. § 233.3(g), and by the Fourth Amendment, see Ex parte Jackson, 96 U.S. (6 Otto) 727 (1877). When an offense is both lucrative and difficult to apprehend, a misdemeanor penalty will not be an adequate deterrent. Moreover, with respect to Alaska, we believe that the current low penalties are out of proportion with this offense's impact on communities, particularly Native communities.

V Conclusion.

Alaska Native villages face serious problems caused by alcohol abuse in their communities, including significant law enforcement problems. We continue to believe that Native villages will have to be directly involved in solving alcohol-related problems and in controlling liquor in their communities. Through our funding and other programs, the Department has sought to support efforts by Native villages in Alaska to address alcohol-related problems in their communities. The Department of Justice appreciates the fact that the Committee is holding this hearing to focus attention on those problems, and we hope that our testimony today helps the Committee and Native villages as they search for solutions.